HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 561 CS Offenses Involving Insurance
SPONSOR(S): Rivera
TIED BILLS: IDEN./SIM. BILLS: SB 1596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	15 Y, 0 N, w/CS	Freire	Cooper
2) Criminal Justice Committee	6 Y, 0 N	Kramer	Kramer
3) Fiscal Council	23 Y, 0 N, w/CS	McAuliffe/Rayman	Kelly
4) Commerce Council			
5)			

SUMMARY ANALYSIS

The bill relates primarily to insurance fraud in various types of insurance. The bill:

- requires specified information in police reports and creates a rebuttable presumption that only passengers mentioned in the police report were involved in the accident;
- provides an extra fee for reinstating a driver's license revoked because of insurance fraud;
- provides that any person convicted of certain insurance frauds will have their driver's license revoked;
- requires, and provides enforcement for, every health care clinic licensed under Chapter 400 to post a sign that indicates individuals may receive rewards for furnishing to the Division of Insurance Fraud (DIF) reports and information about crimes investigated by DIF that lead to arrest and conviction;
- eliminates a misdemeanor penalty for the violation of a stop work order to clarify that offense is a felony;
- updates the definition of "kickback" by broadening its scope;
- provides any willful violation of a rule of the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR), or the Financial Services Commission (FSC) would be a second degree misdemeanor;
- makes each willful violation of an emergency rule or emergency order of DFS, OIR, or FSC by an unlicensed or unauthorized person a third degree felony, with each willful violation considered a separate offense;
- clarifies that any person who knowingly engages in insurance activities without a license commits a third degree felony;
- clarifies independent procurement of coverage (IPC) to state that IPC is coverage which is not solicited, marketed, negotiated, or sold in Florida;
- clarifies that insurers must timely submit final acceptable anti-fraud plans, and provides for imposition of administrative fines for a violation of that requirement;
- provides that service providers cannot bill usual and customary charges if a provider agrees with a patient to waive the deductible or co-payment, and that a person may not participate in a scheme to create documentation of a motor vehicle crash that did not occur;
- clarifies that fraudulent proof of motor vehicle insurance is a third degree felony;
- requires insurers to provide a fraud advisory notice to an insured who filed a claim for reimbursement;
- provides an exception to the statute pertaining to fraudulently obtaining goods and services from a health care provider for investigative actions taken by law enforcement officers for law enforcement purposes;
- enhances the definition of patient brokering, and defines that a health care provider or facility is one that is licensed, certified, or registered with the Agency for Health Care Administration or the Department of Health;
- includes falsely personating an officer of DFS in the list of officers it is unlawful to personate;
- creates a forfeiture account in the Insurance Regulatory Trust Fund for deposit of criminal and forfeiture proceeds obtained by DIF; and
- provides that if any provision of this act is found invalid, the invalidity does not affect the other provisions.

The fiscal impact on the private sector includes increased penalties, including criminal prosecution, for various acts specified in the bill. The fiscal impact on the state cannot be determined at this time, but the impact should not be significant (see Fiscal Comments). The effective date of the bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires a health care clinic to post a sign relating to rewards for information regarding insurance fraud. Enforcement of the sign posting requirement will be done by the Department of Financial Services (DFS).

Safeguard Individual Liberty & Promote Personal Responsibility: The bill creates new penalties for violations of a department rule, emergency rule or emergency order. It creates a new penalty for insurance licensees transacting insurance or engaging in insurance activities without a license. It creates a new penalty for fabrication of "paper" motor vehicle accidents. It adds new circumstances constituting unlawful patient brokering.

B. EFFECT OF PROPOSED CHANGES:

General Background

Insurance Fraud Investigations by the Division of Insurance Fraud: Currently, the Division of Insurance Fraud (DIF) within the Department of Financial Services (DFS) employs sworn law enforcement officers who investigate allegations of unauthorized insurance activities, fraudulent insurance acts, unfair methods of insurance competition or unfair or deceptive insurance acts or practices.[1] These officers may make warrantless arrests upon probable cause for criminal violations established as a result of an investigation.[2] The general laws applicable to arrests by state law enforcement officers apply to Division investigators.

As of 2005, the DIF had arrested over 900 people allegedly connected to more than $25 million in personal injury fraud in the past five years. More than 70 people faced or were serving the minimum prison sentence.[3]

Crash Report

Section 316.066, F.S., requires certain written reports of crashes to be filed with the Department of Highway Safety and Motor Vehicles. The section provides for a "short-form report" which is required to include the following information:

- The date, time, and location of the crash;
- A description of the vehicles involved;
- The names and addresses of the parties involved;
- The names and addresses of all drivers and passengers in the vehicles involved;
- The names and addresses of witnesses;
- The name, badge number, and law enforcement agency of the officer investigating the crash; and
- The names of the insurance companies for the respective parties involved in the crash unless not available.

The bill amends s. 316.068(2), F.S., to provide that each crash report required to be made in writing must contain all of the information specified above. The bill provides that the absence of information regarding the existence of a passenger in a police report creates a rebuttable presumption that no such passengers were involved in the reported crash.

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[1] s. 626.989(2), F.S. (2004).
[2] s. 626.989(7), F.S. (2004).
[3] Baird Helgeson, "Bill Targets Insurance Shenanigans," The Tampa Tribune, 5 April 2005.

Revocation of Licenses

Section 322.21(8), F.S., governs fees relating to applying for reinstatement of a suspended or revoked driver's license. It provides that a person must pay a $35 service fee to apply for reinstatement of a suspended driver's license and a $60 fee to apply for reinstatement of a revoked driver's license, in addition to the fee for a license. The fees are divided between the General Revenue Fund and the Highway Safety Operating Trust Fund.

The bill provides that if the revocation or suspension of the driver's license was for a conviction of patient brokering (s. 817.505, F.S.), or for solicitation (s. 817.234(8), F.S.), or for participating in a staged crash (s. 817.234(9), F.S.), there is an additional fee of $180 for each offense. The bill provides that the Department of Highway Safety and Motor Vehicles (DHSMV) will deposit the additional fee into the Highway Safety Operating Trust Fund.

The bill amends s. 322.21, F.S., to require the DHSMV to revoke the driving privileges of anyone convicted under s. 817, 505, F.S., or s. 817.234(8) or (9), F.S.

Health Care Clinics

Health care clinics are defined as entities at which health care services are provided to individuals and which tender charges for reimbursement for such services.[4]

Health care clinics are primarily licensed by the Agency for Health Care Administration (AHCA).[5] The term "medical director" means a physician, employed by or under contract with a clinic, who maintains an unencumbered physician license in accordance with chs. 458 (physicians), 459 (osteopathic physicians), 460 (chiropractors), or 461 (podiatrists), F.S.[6]

Under current law, there is no requirement in the health care licensure statute (ch. 400) for health care clinics to post signs relating to rewards for insurance fraud. Current law provides for an Anti-Fraud Reward Program to be established within the DFS which is funded from the Insurance Regulatory Trust Fund.[7] Under the program, the DFS may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the DIF arising from specified violations. Only a single reward amount may be paid out for claims arising from the same transaction.

Additionally, current law requires the AHCA to make inspections of health care clinics as part of the initial license application and renewal application procedures.[8] AHCA may also make unannounced inspections of licensed clinics as necessary to determine compliance with the Health Care Clinic Act under Part XIII of chapter 400, F.S.

The bill amends s. 400.9935, F.S., to require that every medical clinic licensed under Chapter 400 post a sign that indicates that individuals may receive rewards for furnishing to the Division of Insurance Fraud (DIF) reports and information about committing crimes investigated by DIF that lead to arrest and conviction. The sign must be posted in a conspicuous location visible to all patients. The crimes the posting would disclose are:

- s. 440.105, F.S., relating to prohibited activities under the workers' compensation law;
- s. 624.15, F.S., relating to willful violations of the Insurance Code;

[4] s. 400.9905(4), F.S. (2004).
[5] See s. 400.9905(4), F.S., for a listing of entities that are not required to be licensed by AHCA.
[6] s. 400.9905(5), F.S. (2004).
[7] s. 626.9892, F.S. (2004).
[8] s. 400.9915, F.S. (2004).

- s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts under the Insurance Code;
- s. 626.989, F.S., relating to resisting an arrest or otherwise interfering with DIF investigators; or
- s. 817.234, F.S., relating to false and fraudulent insurance claims.

The DFS will enforce the posting requirement. Sworn law enforcement investigators of DIF would have the authority to make unannounced inspections of licensed clinics to ensure that such requirement is being met. The bill requires the clinics to allow "full and complete access to the premises" to DIF employees to determine whether the clinic is complying with the posting requirements.
The clinic would be required to post the sign in a conspicuous location visible to all patients.

Similarly, section 12 of the bill adds subsection 14 to s. 627.736, F.S., requiring an insurer to provide a person who has filed a claim of reimbursement to provide the insured with a Fraud Advisory Notice. The notice must state that the DFS may pay rewards of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by the DIF arising from the crimes disclosed in the posted signs.

Workers' Compensation

The Division of Workers' Compensation (DWC) and the DIF both within DFS must work closely together to carry out their statutory duties. The DWC enforces administrative compliance with the workers' compensation law, pursuant to s. 440.107, F.S. The DIF enforces the criminal provisions of the workers' compensation law, pursuant to s. 440.105, F.S. The divisions have developed and implemented a referral program to facilitate the referral of cases between the divisions so that each division can determine if an investigation will be initiated from the referral. According to the DWC, referrals are made to each division within 24 hours of a suspected violation of the law, and are considered a priority to be acted upon immediately.

In 2003, the Legislature passed worker's compensation reform that made a violation of a stop work order a felony of the third degree.[9] However, a separate statutory provision making a violation of a stop work order a misdemeanor was not repealed.[10] The bill removes the conflicting statutory penalty provision for violation of a stop work order. Accordingly, a violation of a stop work order is punishable as a third degree felony.

Further, current law requires certain employers to carry workers compensation coverage. Section 440.105 (4)(a) 3., F.S., provides it is unlawful for any employer to knowingly "fail to secure payment of compensation if required to do so by this chapter." The bill changes the words "payment of compensation" to "workers compensation coverage" to clarify that it is unlawful for an employer to not secure workers compensation coverage.

Regulation of Professions and Occupations:

Chapter 456, F.S., regulates Health Professions and Occupations. Currently, s. 456.054, F.S., prohibits kickbacks. The bill expands the definition of "kickback" to mean a remuneration or payment by or on behalf of a provider of health care services or items to any person as incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

Violations of Administrative Rules, Emergency Rules, or Emergency Orders

The Florida Insurance Code (Code) is contained in chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.[11] The Code contains numerous penalty provisions which are specific to a particular

[9] Ch. 2003-412, L.O.F.; see s. 440.105(4)(b)8., F.S. (2004).
[10] s. 440.105(2)(a)4., F.S. (2004).
[11] s. 624.01, F.S. (2004).

violation. However, the Code also contains general penalty provisions that apply for violations of the Code when no other penalty is provided in the Code or in other applicable laws. Section 624.15, F.S., is a general penalty provision in the Code. It makes any willful violation of the Code a second degree misdemeanor.

The bill amends the general penalty provision in s. 624.15, F.S. to include willful violations of an administrative rule of DFS, the Office of Insurance Regulation (OIR), or the Financial Services Commission. Therefore, any willful violation of an administrative rule of DFS, OIR, or the Financial Services Commission would be a second degree misdemeanor. Each instance of the willful violation will be considered a separate offense. According to DFS, this provision would allow DIF investigators to enforce violations of DFS rules (by misdemeanor arrest) the same way they may currently enforce violations of the Insurance Code. This provision would be in addition to current penalties pertaining to the denial, suspension, or revocation of a certificate of authority, license or permit.[12]

Under current law, the DFS may issue emergency rules after a natural disaster (hurricane) or other types of emergencies depending on the nature of the insurance issue.[13] During the 2004 hurricane season, the DFS issued approximately 12 emergency rules pertaining to public adjusters, mediation, and insurance agents.

The bill adds a provision to the general penalty provision in s. 624.15, F.S. The added provision makes each willful violation of an emergency rule or emergency order of DFS, OIR, or the Financial Services Commission by someone who is not licensed, authorized or eligible to engage in business in accordance with the Insurance Code a third degree felony with each willful violation considered a separate offense. There is no criminal penalty in current law for willful violations of emergency rules or emergency orders.

Unauthorized Insurers

Section 626.112, F.S., provides that no person may hold himself or herself out to be an insurance agent unless he or she is licensed by the department and appointed by an appropriate entity or person. The bill amends s. 622.112, F.S., to provide that "any person who knowingly transacts insurance or otherwise engages in insurance activities in this state without a license in violation of this section commits a felony of the third degree."

Independently Procured Coverage:

Independently procured coverage (IPC) is insurance coverage that an insured in Florida, typically a business, obtains by directly contacting an unauthorized foreign or alien[14] insurer, or self insurer.[15] The insured must file specific information about the policy with the Florida Surplus Lines Service Office (Office) and must pay 5 percent of the gross amount of the premium and a 0.3 percent service fee to the Office.

Currently, subsection (4) of s. 626.901, F.S., exempts *independently procured coverage* (IPC) from being included within the definition of unauthorized insurance. The bill clarifies that IPC coverage is *not coverage which is solicited, marketed, negotiated, or sold* in Florida. This clarification is necessary, according to OIR officials, because some unauthorized insurers have asserted the defense that they are soliciting or selling IPC and therefore are not in violation of the unauthorized entities provisions.

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[12] In Avatar Development Corporation v. State, 723 So.2d 199 (Fla. 1998), the Florida Supreme Court held that a statute making it a misdemeanor to willfully violate any administrative rule, regulation or permit condition promulgated by the Department of Environmental Protection was a constitutionally valid delegation of legislative authority to an administrative agency.

[13] Under s. 120.54, F.S., agencies are authorized to issue emergency rules if necessary to protect the public health, safety or welfare.

[14] Insurers are divided into three categories under the Insurance Code: *domestic insurers* are formed under the laws of Florida; *foreign insurers* are formed under the laws of any state, district, or territory or commonwealth of the United States, other than Florida; and *alien insurers* are defined as insurers other than domestic or foreign insurers. Foreign and alien insurers must meet certain capital, surplus, and operational requirements.

[15] s. 626.938, F.S. (2004).

The bill amends s. 626.938, F.S., pertaining to reporting and taxing of IPC. The law currently allows persons in Florida to independently procure insurance from foreign (out of state) or alien (out of country) insurers that do not hold a Florida certificate of authority (COA) and to pay all necessary taxes and fees. The bill clarifies independently procured coverage to provide that every insured who "resides" in Florida and procures insurance "from another state or country" with an unauthorized insurer "legitimately licensed in that other jurisdiction," or any self-insurer who "resides" in this state and so procures insurance, must within 30 days file a report with the Florida Surplus Lines Service Office. This clarification is necessary because some unauthorized insurers have asserted the defense that they are soliciting or selling IPC and therefore are not in violation of the unauthorized entities provisions of the Insurance Code.

The bill also provides that IPC may not be secured for workers' compensation coverage.

Anti-fraud Investigative Unit

Section 626.9891, F.S., is entitled "Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance." The statute requires insurers who had $10 million or more in direct premiums in the previous calendar year to establish or contract a unit to investigate fraudulent claims. The bill amends s. 626.9891(7), F.S., to provide that an insurer must timely submit a final acceptable anti-fraud plan or anti-fraud investigative unit description, and it gives the department, office, or commission the right to impose fines if insurers fail to submit an acceptable anti-fraud plan.

Forfeiture Account

Under current law, unless otherwise provided in the law, proceeds of a state agency accrued under the Florida Contraband Forfeiture Act are put into the General Revenue Fund.[16] According to DFS, DIF is one of the few law enforcement organizations in the state not to have a forfeiture fund or account into which to deposit proceeds from criminal or forfeiture proceedings.[17] Thus, any proceeds DIF collects from such proceedings are deposited into the General Revenue Fund.

The bill creates a forfeiture account in the Insurance Regulatory Trust Fund into which proceeds derived from DFS' criminal and forfeiture proceedings are to be deposited. Thus, such proceeds will no longer be deposited into the General Revenue Fund. According to DFS, once the forfeiture account is created, it may be used to purchase special equipment and other non-budgeted items that enhance the DFS's ability to detect crime and enforce criminal laws.[18] The department also indicates that the existence of the forfeiture account would create the necessary incentive for officers or investigators to pursue forfeiture actions in conjunction with their cases, and for DFS to take on the considerable expense in seeing these actions to fruition.[19]

Notification of Insured's Rights

Section 627.7401, F.S., provides the Financial Services Commission must adopt a form to notify insureds of their rights to receive personal injury protection, and requires insurers to deliver this notification to an insured within 21 days of receiving notice from the insured of an automobile accident involving personal injury to the insured. The section provides such notice must include a description of the benefits provided by personal injury protection.

The bill provides this notification must also include:

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[16] s. 932.7055(6), F.S. (2004). For example, under s. 626.9893, proceeds obtained by the Florida Department of Law Enforcement is deposited in the Forfeiture Investigative Support Trust Fund and proceeds obtained by the Department of Environmental Protection is deposited in the Internal Improvement Trust Fund.

[17] Personal communication from DFS on file with the Insurance Committee.

[18] Id..

[19] Id.

- An advisory informing the insureds that the DFS may pay a reward of up to $25,000 to persons providing information leading to the arrest and conviction of persons committing crimes investigated by DIF.
- An advisory that if the insured notifies the insurer of a billing error, the insured may be entitled to a reduction in the amount paid by the insured's motor vehicle insurer.
- A notice that solicitation of a person injured in a motor vehicle crash for purposes of filing personal injury protection tort claims could be in violation of Florida law or the rules of the Florida Bar, and should be immediately reported to the DIF.

False and Fraudulent Insurance Claims

Under current law, any physician and other healthcare provider (except hospitals) who waives deductibles or co-payments as a general business practice commits insurance fraud. The bill would extend the application of the statute to any "service" provider. The proposal also deletes the term 'patient' and inserts the term 'insured' pertaining to the waiver of deductibles or co-payments with the provider.[20]

Current law provides that it is a second degree felony (with a 2 year minimum term of imprisonment) to plan or organize an intentional motor vehicle crash for the purpose of making a tort claim.[21] The bill expands this provision to make it a second degree felony to plan or organize a "scheme to create documentation of a motor vehicle crash that did not occur" for purposes of a tort claim or personal injury protection benefits claim. According to representatives with DFS, adding the crime of a "paper accident" would deter motor vehicle insurance fraud. DFS officials estimate that bogus automobile insurance claims add $240 to every automobile insurance policy each year and increase costs for goods and services.[22]

Current law makes it a third degree felony to create, market, or present a false or fraudulent insurance card. The bill expands the applicability of the statute to provide that any person who presents false or fraudulent "proof of" motor vehicle insurance commits a third degree felony.[23]

Under current law, giving a false or fictitious name to a health care provider, giving a false or fictitious address to a health care provider, or assigning the proceeds of any health maintenance contract or insurance contract to a health care provider knowing the contract is invalid or void is prima facie evidence the person giving false information has intent to defraud the health care provider.[24] According to staff at DFS, during the course of an insurance fraud investigation a DFS investigator may give a false name or address or false information relating to a health insurance policy to a health care provider they are investigating. This information is given to a health care provider in order for DFS to obtain information about the medical treatment given by, and billing practices of, the health care provider.

There are no exceptions for activities of law enforcement officers giving false or fictitious information for law enforcement purposes under current law. The bill amends current law to provide such an exception. The bill's provision in this regard will protect investigators who are engaged in undercover police investigations.

Patient Brokering

Presently, it is a third degree felony for a person, health care provider or facility to pay or bribe in cash or in kind to induce the referral of patients from or to a health care provider or health care facility.[25] The bill would add a provision stating that it is a third degree felony to solicit or receive any commission,

[20] s. 817.234(7)(a), F.S.
[21] s. 817.234(9), F.S.
[22] Baird Helgeson, "Bill Targets Insurance Shenanigans," The Tampa Tribune, 5 April 2005; Personal communication from DFS on file with the Insurance Committee.
[23] s. 817.2361, F.S.
[24] s. 817.50,(2), F.S. (2004).
[25] s. 817.505, F.S.

bonus, rebate, kickback, or bribe in cash or in kind or engage in a split-fee arrangement in any form whatsoever in return for the acceptance or acknowledgment of treatment from a health care provider or facility.

Under current law, for the purposes of patient brokering, a health care provider or health care facility is defined, in part, as "any person or entity licensed, certified, or registered." The bill amends the definition of a health care provider or health care facility to include providers "required to be licensed, certified, or registered; or lawfully exempt from being required to be licensed, certified, or registered" with the Agency for Health Care Administration.

Falsely Personating an Officer

A person who falsely assumes or pretends to be an officer and "takes upon himself or herself to act as such" commits a third degree felony pursuant to s. 843.08, F.S. The officers specified in s. 843.08, F.S., are:

- Sheriff,
- Officer of the Florida Highway Patrol,
- Officer of the Fish and Wildlife Conservation Commission,
- Office of the Department of Environmental Protection,
- Officer of the Department of Transportation,
- Officer of the Department of Corrections,
- Correctional Probation Officer,
- Deputy Sheriff,
- State Attorney,
- Assistant State Attorney,
- Statewide Prosecutor,
- Assistant Statewide Prosecutor,
- State Attorney Investigator,
- Coroner,
- Police Officer,
- Lottery Special Agent,
- Lottery Investigator,
- Beverage Enforcement Agent,
- Watchman,
- Any member of the Parole Commission,
- Any administrative aide of the Parole Commission,
- Any supervisor of the Parole Commission, or
- Any personnel or representative of the Florida Department of Law Enforcement.

The bill adds "officer of the Department of Financial Services" to the list of officers. Thus, falsely assuming or pretending to be an officer of DFS will be a third degree felony, unless the officer is personated during the commission of a felony, in which case personating an officer of DFS is a second degree felony. However, if the commission of a felony results in death or personal injury of another, then the penalty for personating a DFS officer becomes a first degree felony.[26]

Severability Clause

The bill provides that if any section of the bill is found to be invalid such invalidity does not affect other provisions or applications of the act which can be given effect. It declares each provision of the act severable.

[26] In State v. Alecia, 692 So.2d 263 (Fla. 5th DCA 1997), the Fifth District Court of Appeal held that the statute was not unconstitutionally vague or overbroad as applied to a defendant who identified himself as deputy sheriff while trying to obtain information about recent suspicious activity in his neighborhood.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.068(2), F.S., to specify what information is required in a police report, and creates a rebuttable presumption that passengers not mentioned in the report were not in the vehicle.

Section 2. Amends s. 322.21(8), F.S., to provide an additional fee for the reinstatement of a suspended or revoked driver's license when the license was suspended or revoked for violation of s. 817.234(8) or (9), insurance fraud, or s. 817.505, F.S., prohibiting patient brokering.

Section 3. Creates s. 322.26(9), F.S., providing the department shall revoke the license of any person convicted under s. 817.234 (8) or 9, F.S., or s. 817.505, F.S.

Section 4. Creates s. 400.9935(13), F.S., requiring clinics to post signs with information regarding insurance fraud.

Section 5. Amends s. 440.105, F.S., by removing a prohibited activity from subsection 2.

Section 6. Amends s. 456.054, F.S., defining "kickback."

Section 7. Amends s. 624.15, F.S., to include general penalties for violation of rules of the department, office, or commission.

Section 8. Amends s. 626.112, F.S., to provide a penalty for the violation of insurance license requirements.

Section 9. Amends s. 626.938, F.S., relating to the reporting and taxing of independently procured coverages.

Section 10. Amends s. 626.9891, F.S., concerning penalties for non-compliance of anti-fraud investigative units.

Section 11. Creates s. 626.9893, F.S., relating to the disposition of revenues from criminal or forfeiture proceedings.

Section 12. Creates s. 627.736(14), F.S., requiring insurance companies to provide a fraud advisory notice when an insured files a claim.

Section 13. Amends s. 627.7401, F.S., providing additional information that must be included in the form notifying insureds of their right to receive personal injury protection benefits.

Section 14. Amends s. 817.234, F.S., relating to false and fraudulent claims.

Section 15. Amends s. 817.2361, F.S., relating to false or fraudulent proof of motor vehicle insurance.

Section 16. Amends s. 817.50(2), F.S., relating to the fraudulent obtaining of goods and services.

Section 17. Amends s. 817.505, F.S., relating to patient brokering.

Section 18. Amends s. 843.08, F.S., relating to falsely personating an officer.

Section 19. Creates s. 932.7055(6)(n), F.S., relating to the disposition of liens and forfeited property.

Section 20. Provides that if any provision of this act in invalid, such invalidity does not affect other provisions in the act.

Section 21. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care clinics would be responsible for placing anti-fraud reward signs in conspicuous locations within their clinics and must allow complete access to their premises to law enforcement personnel within the DIF to make inspections to determine compliance with the signage requirement.

Persons would be subject to increased penalties, including criminal prosecution, for various acts specified by the bill. Criminal fines ordered by a Court pursuant to s. 775.083, F.S., must be deposited in the trust fund for the clerk of the circuit court for that particular county, such fund being created by s. 142.01, F.S.

D. FISCAL COMMENTS:

Representatives with DFS stated that the responsibilities set forth in the bill will be carried out within the existing resources of the agency. The DIF has not estimated at this time how much revenue will be received due to administrative fines imposed against insurers for failing to submit acceptable anti-fraud plans or anti-fraud unit descriptions.

The Criminal Justice Estimating Conference states that the penalty provisions of this legislation have an indeterminate, but likely insignificant, prison bed impact.

It is not known how much moneys would be deposited by the Division of Insurance Fraud into the Insurance Regulatory Trust Fund as a result of criminal proceedings or forfeiture proceedings under the bill. Such amounts would be deposited into the General Revenue Fund, but no money has been deposited because the DIF has not pursued any forfeiture proceedings.

The bill proposes a new surcharge ($180) when persons convicted on specific insurance fraud offenses seek reinstatement of their suspended or revoked driver's license. Representatives with the DHSMV state that the amount to be collected is "indeterminate" since the number of such convictions is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DIF is authorized to adopt rules relating to the manner in which suspected fraudulent activity is reported to DIF in a standardized referral form.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the March 23, 2006 meeting, the Insurance Committee approved HB 561 with an amendment. The amendment amended s. 316.068(2), F.S., by requiring crash report forms to include certain information about the accident, specifically, the amendment requires a crash report to include the name of all passengers in a vehicle. The amendment makes the absence of information in a crash report concerning the existence of passengers in the vehicles a rebuttable presumption that no such passengers were in the vehicle. The bill as originally filed did not affect s. 316.068(2), F.S.

This analysis has been updated to reflect the changes made by the Insurance Committee at its March 23, 2006, meeting.

At the April 4, 2006 meeting, the Fiscal Council approved HB 561 with two amendments. The first amendment changed the words “payment of compensation “ to “workers compensation coverage” to clarify that it is unlawful for an employer to not secure workers compensation coverage. The second amendment provided additional information that must be included in the form notifying insureds of their right to receive personal injury protection benefits.